

REMARKS

The Examiner has rejected claims 1, 2 and 4-7 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 2,697,932 to Goodwin ("Goodwin") in view of U.S. Patent No. 5,802,785 to Crook ("Crook"). Applicant respectfully disagrees.

Goodwin fails to disclose any shim plate or the like. Rather, Goodwin has as its object the providing of "an aluminum sill, and means for mounting and anchoring the sill in masonry walls," Col. 1, lines 27-29. The sill itself appears to be the finishing element for the window treatment of Goodwin, moreover, and, as such, "positioning finishing material on top of the sill portion of the shim plate and fastening the finishing material to the framing member using fasteners extending through the shim plate" as set forth in claim 1 would appear contrary to the expressed intent of Goodwin to provide a sill.

While the sill 10 of Goodwin does include a downwardly-extending front flange 14, it is contrary to the purpose of Goodwin to extend fasteners through this flange as they would have to penetrate not only the "preferably extruded aluminum" (Col. 1, line 62) sill material, but also would have to penetrate masonry. By contrast, a method that may be used to fasten the shim plate 22 of the present application to the framing member is described as follows at page 5, lines 4-7:

"According to one embodiment, the shim plate 20 may be used by positioning it with its distal end under the base 16 of the window frame 10. The shim plate 20 is then leveled and fastened in place, on the interior surface 32 of the associated framing member 30 as by nails or screws."

Since the sill 10 of Goodwin appears from the patent to be intended for use without any overlying wall board or other overlying finishing materials, and since one of the concerns of Goodwin is that any joints between adjacent sill plates be watertight, driving screws or nails or extending other fasteners through the sill plate as a means of anchoring it would seem contrary to the purpose of Goodwin. In this regard, Goodwin states at Col 1, lines 37-41:

“Accordingly, another object of the invention is to provide an aluminum sill made up in sections which may be properly mounted and tightly fastened in the masonry structure and the joints between the sill sections made water-tight.”

Goodwin also states at Col. 2, lines 43-49:

“With this construction, it will be seen that the gutter bar securely supports each section of the sill and joins the sections together. At the same time, it positions the sill in inclined position on top of the wall. Any moisture that penetrates under the cover plate will drip into the gutter bar and then pass to the front of the masonry wall to be disposed of.”

Rather than using screws or nails or any other fasteners extending through the sill to anchor the sill, Goodwin teaches the use of anchor plates 18 embedded in the masonry wall. In this regard, Goodwin states at Col. 1, lines 72-Col. 2, line 3:

“To anchor the sill in the wall, anchor plates 18 are built into the wall which have an outwardly extending flange 20 at the bottom thereof which passes under a brick of a brick wall, or is embedded in a poured concrete wall. The top of the anchor 18 rests on top of the wall and has an upwardly extending tongue 22 projecting out parallel to the front edge of the wall. A rearwardly extending lip 24 is formed on the back of the sill flange 14 a short distance below the lower face of the sill 10 to provide a recess to receive the tongue 22 of the anchor. Several anchor plates are distributed along the wall in position to engage the flange 14 of the sill to securely anchor the front edge of the sill in place.”

From this it is evident that Goodwin teaches away from using nails or screws or other penetrating fasteners to secure the sill 10. Rather, by the use of embedded anchor

plates 18 to anchor the sill 10, Goodwin eliminates any reason to use nails or screws.

Moreover, as the positioning of the sill 10 is controlled by the embedded anchor plates 18, and as the anchor plates 18 support the sill 10, there would be no purpose to “expanding a foaming material between the framing member and the shim plate to support the shim plate relative to the framing member,” (Claim 1, lines 8-9).

It is also possible that expanding foam under the anchored sill 10 of Goodwin would result in the foam clogging the gutters and defeating their purpose.

Further, as mentioned above, Goodwin does not teach or suggest that it might be used for supporting finishing materials by “positioning finishing material on top of the sill portion of the shim plate and fastening the finishing material to the frame member using fasteners extended through the shim plate,” as set forth in Claim 1, lines 10-13, or having “a foaming material expandable between the framing member and the shim plate for supporting the shim plate relative to the framing member as fasteners are extended through the shim plate into a framing member” as set forth in Claim 7, lines 7-9 as amended.

Crook has been cited by the Examiner as using “a foaming insulation for window frames between the sill 20 and framing member 66.” Even acknowledging this, Crook is not directed to a shim plate as recited in the claims of the present application, but rather to a window molding that appears also to be a finishing element. Crook thus does not contain any teaching of “expanding a foaming material between the framing member and a shim plate to support the shim plate relative to the framing member” as in claim 1 or having “a foaming material expandable between the framing member and the shim plate for supporting the shim plate relative to the framing material” as in claim 7. Moreover, Crook does not teach “positioning finishing material on top of the sill portion of the shim plate and fastening the finishing material to the framing member using fasteners extended through the shim plate” as in claim 1. As with the sill 10 of Goodwin, the molding 10 of Crook appears to be the finishing piece, and extending fasteners through the molding 10 would appear contrary to the teachings of Crook.

Thus, neither Crook nor Goodwin nor the combination of the two suggest or teach the method or structure of independent claims 1 or 7. Combining these two patents is improper in any event, as Goodwin does not require foam to support the sill 10 in view of

the use of the embedded anchor brackets 18.

Applicant asserts that the Examiner has not established the prima facie case of obviousness of independent claims 1 and 7. The remaining claims are dependent from these independent claims. As such, for the reasons set forth above, all claims of the present application should be allowed.

In regard to claim 2, the Examiner states that Goodwin discloses the sill portion as inserted into a slot of the framed member and cites reference numerals 16 and 32. In Fig. 2 of Goodwin, the flange 16 of the sill 10 appears to extend behind a depending flange of the frame 32. However, applicant does not see a slot into which the flange 16 is inserted in this figure or any of the other figures. While the frame 32 does have two depending flanges, no portion of the flange 16 is extended between these two flanges as the lower edge of the second flange is shown as higher than the upper edge of the flange 16. Further, as amended, claim 2 provides that the lip supports the distal edge of the sill portion of the shim plate against deflection toward the frame member. There is no such teaching or suggestion of this in Goodwin.

Regarding claim 3, the Examiner states that the combination of Goodwin and Crook discloses the use of plastic for the shim plate. Once again, as explained above, neither the sill of Goodwin nor the molding of Crook is a shim plate.

Regarding claim 6, the Examiner states that Goodwin discloses the sill portion as being perpendicular to the insert and the end portion of the sill as being in contact with the periphery of the framed member, citing element 36 in Fig. 3. This figure is a sectional view of Fig. 1 "showing the joint between sill sections" (Col. 1, line 55). Element 36 is the gutter bar, also shown in Fig. 4. It appears that the edges of the adjacent sill portions are captured between the gutter bar 36 and a cover plate 38. Goodwin states at Col. 2 lines 18-25:

"The gutter bar has a length equal to the width of the sill, and is tapered in construction so that the upper walls of the gutter rest against or supports the lower face of the sill in its inclined position. A cover plate 38 is mounted above the joint between the sill sections and is fastened in position to the gutter bar by means of the central portion of the gutter

bar.”

As the sill is supported at an incline, it would not be perpendicular to a vertical insert such as a window or door. As such, applicant respectfully traverses the rejection of this claim.

Claim 3 is rejected under 35 U.S.C §103(a) as unpatentable over Goodwin in view of Crook and further in view of Xanten, as Xanten discloses the use of a steel sash, as Xanten. As is the case with Goodwin and Crook, however, Xanten does not disclose the use of a shim plate as set forth in the claims and Goodwin and Crook, even if they could be properly combined, do not teach or suggest how the referenced L shaped sash might be used as a shim plate.

Accordingly, all claims of the present application are in allowable form and reconsideration and withdrawal of the rejection thereof is respectfully requested.

Respectfully submitted,

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